Filed 12/11/08 In re J.P. CA2/8

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re J. P., a Person Coming Under the Juvenile Court Law.	B199087 (Los Angeles County Super. Ct. No. FJ39749)
THE PEOPLE, Plaintiff and Respondent, v. J. P., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Morton Rochman, Judge. Affirmed.

Courtney M. Selan, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Michael C. Keller and Tannaz Kouhpainezhad, Deputy Attorneys General, for Plaintiff and Respondent.

J. P. appeals from an order of wardship entered by the juvenile court after sustaining a petition alleging one count of residential burglary (Welf. & Inst. Code, § 602; Pen. Code, § 459.) The juvenile court found the act to be second-degree burglary, and ordered appellant placed in a camp community program. Appellant filed timely notice of appeal asserting that there was insufficient evidence for the court to find true the charge of burglary. Finding sufficient evidence in the record for the juvenile court judge to sustain the petition, we affirm.

BACKGROUND

Summary of the Facts

On the night of September 19, 2006, appellant accompanied his brother, who drove to a duplex at 5658 Farmdale Street, Los Angeles. At approximately 9:20 p.m., Eldelfonsa Carrillo was returning home there, and saw appellant's brother enter neighbor Carmen Aldana's garage. Carrillo also saw appellant, who was sitting in the passenger seat of a car parked approximately five feet from the garage. Appellant's brother saw Carrillo, ran out of the garage to the car, and drove away with appellant.

Lucia Aldana, daughter of the garage's owner, arrived home and called the police. Approximately 30 minutes later, appellant returned. Ms. Aldana told him she knew he had "robbed" her garage, and that the police had been called. Appellant responded that "it wasn't him," but twenty minutes later he returned a scooter taken from the garage. Appellant told Ms. Aldana that "he was going to pay all the damage that he had caused."

Los Angeles Police Officer Kyle Kirkman arrived in response to Ms. Aldana's call and took appellant into custody. After being *Mirandized* (*Miranda v. Arizona* (1966) 384 U.S. 436), appellant waived his rights and told Officer Kirkman that he had taken Ms. Aldana's property. Appellant also stated that he had attempted to give the stolen property back to the victim.

At trial, appellant denied having known that his brother intended to burglarize the garage "until [he] saw him do it," and claimed that he did not attempt to return the scooter or speak to Ms. Aldana. Appellant's brother testified that he, not appellant, had

returned the scooter, and that appellant had had no knowledge of the brother's intent to burglarize the garage.

DISCUSSION

1. Standard of Review

In a juvenile proceeding, the reviewing court "'must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.'" (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088-1089; see also *Jackson v. Virginia* (1979) 443 U.S. 307, 313-314; *People v. Johnson* (1980) 26 Cal.3d 557, 578.) The standards of review for sufficiency of the evidence in a juvenile proceeding are the same as in a criminal case. (*In re Roderick P.* (1972) 7 Cal.3d 801, 809.) "The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt." (*People v. Mincey* (1992) 2 Cal.4th 408, 432.)

2. Sufficiency

An individual who aids or abets the commission of an offense is liable to the same extent as the perpetrator. (See *People v. Montoya* (1994) 7 Cal.4th 1027, 1038-1039.) The sole issue here is whether the prosecution presented sufficient evidence to permit a reasonable trier of fact to conclude that appellant was guilty as an aider or abetter. (See *In re Babak, supra*, 18 Cal.App.4th at pp.1088-1089.) An individual may be found guilty of aiding and abetting the commission of a crime if "he or she knows the full extent of the perpetrator's criminal purpose and gives aid or encouragement with the intent or purpose of facilitating the perpetrator's commission of the crime." (*People v. Beeman* (1984) 35 Cal.3d 547, 560.) The appellant need not "be prepared to commit the offense by his or her own act should the perpetrator fail to do so, nor [must] the aider and abettor . . . seek to share the fruits of the crime." (*Ibid*.)

A. *Appellant had contemporaneous knowledge of his brother's purpose.*

Appellant contends that he did not know that his brother intended to burglarize the garage when he first entered the car with his brother. However, the test for determining the requisite knowledge is not whether appellant knew of his brother's unlawful purpose when entering the car, but rather whether he learned of the purpose at any time before his brother's final departure from the garage. (See *People v. Montoya*, *supra*, 7 Cal.4th at pp. 1045-1046.) In his testimony, appellant stated that he observed his brother enter a garage, which appellant knew belonged to someone else, and remove objects. Appellant's brother testified that during the burglary appellant sat in the car and watched. This testimony established that appellant knew that his brother was engaging in unlawful acts, contemporaneously with their commission.

B. *Evidence showed that appellant intended to assist the act.*

Appellant asserts that the evidence presented at trial was insufficient to prove he had the requisite intent to assist his brother in the commission of the crime, and that the evidence instead showed that appellant "did nothing but sit in the front seat of a car, and return the scooter, subsequently." The presence of an individual at the scene of a crime, even where he or she fails to take steps to prevent the crime, is not sufficient to establish that a person is an aider or abettor *without more*. (See *In re Jose T.* (1991) 230 Cal.App.3d 1455, 1460.)

A reviewing court can reverse the finding of the trial court only where "'"upon no hypothesis whatever is there sufficient evidence to support"'" the finding. (*People v. Southard* (2007) 152 Cal.App.4th 1079, 1085.) Officer Kirkman testified that appellant stated he had taken the victim's property, and that "his brother helped and drove the vehicle." Ms. Aldana testified that appellant attempted to return stolen property, and stated he would pay for all the damage he had caused. Evidence of acts subsequent to the commission of a crime are relevant to show consciousness of guilt. (See *People v. Bradford* (1997) 14 Cal.4th 1005, 1054-55 [holding that admission of evidence of flight can be proper under circumstances suggesting it was motivated by guilt].) Circumstantial

evidence may be used to infer intent. (*People v. Martinez* (1995) 11 Cal.4th 434, 450) Appellant's attempt to return the stolen property, offer to remunerate the victim for the damage he had caused, and statements to the police indicate actual and intentional participation in the crime. Considering this evidence, the judge found that appellant had "acted in fact as a lookout." The evidence was sufficient to lead a reasonable trier of fact to conclude that appellant intended to assist in his brother's burglary of the garage.

DISPOSITION

The order under review is affirmed.

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COOPER, P. J.

We concur:

FLIER, J.

BIGELOW, J.